IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 160 OF 1995

Sikandar Mahiboob Patel,
Aged about 31 years,
R/o. Kole, Tq. Sangola,
District Solapur ...Appellant.

Versus

The State of Maharashtra ...Respondent

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Shri. R.V. More, Advocate for the appellant.

Shri. A.S. Shitole, A.P.P. for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.
DATED: 5TH OCTOBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant i.e. original accused No.3 challenges the judgment and order dated 06.03.1995 passed by the learned Special Judge, Solapur in Criminal case No. 14/1993. By the said judgment and order, the learned Special Judge convicted the appellant under Sections 3 r.w. Section 7 of Essential Commodities Act and sentenced him to R.I. for three months and to pay fine of Rs.500/- i/d R.I. for nine days.

. It may be stated here that alongwith the appellant, two co-accused i.e. original accused Nos. 1 and 2 were also charged for the offence under Sections 3 r.w. 7 of Essential Commodities Act, however, both these co-accused have been

acquitted by the learned Special Judge by the impugned judgment and order.

2. Briefly stated the prosecution case is as under:-

. That the complainant P.W.1 Police Head Constable Ambadas Hariba Yadav alongwith Police Constable Deelip Jadhav were patrolling on Sangola-Miraj road on 14.5.1993. They found one tempo bearing No. MEH/4931 was proceeding. Despite giving signals to stop, the said tempo went towards Nagaj village in high speed, hence they chased the said tempo and the said tempo came to be stopped. Two persons were found in the tempo i.e. original accused No. 1 Rajubhai Saheblal Patel and original accused No.2 Pandurang Nivrutti Kolekar. The tempo was searched in presence of panchas. Nine barrels containing 200 litres kerosene in each barrel came to be found. Accordingly, panchnama was prepared and the barrels with kerosene came to be seized. Thereafter P.W.1 Ambadas Yadav gave his complaint (Exh.27). Investigation was handed over to P.W.11 A.P.I. Kazi. Offence was registered vide C.R. No. 43/94 under Section 3 and 7 of Essential Commodities Act. (Page 97). Thereafter the appellant alongwith original accused No.1 Rajubhai Patel and original accused No.2 Pandurang Kolekar

came to be charge sheeted.

3. The particulars of the offence (Exh.20) were read over and explained to the accused who pleaded not guilty. The particulars were that the appellant alongwith the original accused Nos. 1 and 2 on 14.5.93 at about 3.00 p.m. or there about were found on Sangola Miraj road in front of Kalu-Balu Wadi with Tempo bearing No. MEH-4931 loaded with nine Iron Barrels containing 200 litres kerosene in each barrel intending to take out of Solapur Dist without having any licence, pass or authority and they thereby committed an offence under section 7 of the Essential Commodities Act. Thereafter, the prosecution examined 11 witnesses. On going through the evidence led by the prosecution, the learned Special Judge acquitted the original accused Nos. 1 and 2 of all charges, however, he convicted the appellant as stated in para 1 of this judgment. Hence, this appeal.

4. In the present case, the prosecution examined 11 witnesses. However, in my view, it would not be necessary to discuss the evidence of all these witnesses in detail, as this appeal can be disposed of on a very short point which would not require detailed discussion of the evidence of these witnesses. The learned Special Judge has convicted

the appellant on the ground that he sold the kerosene to P.W.6 Pandurang Garala and P.W.9 Narayan Gherade on 28.2.93 and 27.3.93. However, the entries in respect of the said sale of kerosene have not been properly made by the appellant in his stock register. The learned Special Judge has observed that from the evidence it is seen that the appellant did not maintain true accounts of his transactions in respect of purchases and sales of kerosenes and thus violated the conditions of licence. Thus, the learned Special Judge has convicted the appellant as he did not maintain the stock book and receipts properly. However, it is pertinent to note that the substance of this particular accusation in respect of which the appellant came to be convicted was not specifically stated to him. Obviously, in such case the appellant did not have sufficient opportunity to defend himself or to rebut the case against him. In the facts of the present case, it is seen that the appellant did not have an adequate opportunity to defend himself. On behalf of the prosecution nothing has been brought out that the provisions of section 251 of Cr.P.C. were complied with. In such case, the conviction of the appellant deserves to be set aside and is accordingly set aside. Fine amount, if any, paid by the appellant, be refunded to the appellant. The appellant is on bail, his

bail bond shall stand cancelled. Criminal appeal is allowed.